

Curriculum Vitae of
BENJAMIN C. ZIPURSKY
James H. Quinn '49 Professor
Fordham University School of Law
150 West 62nd Street
New York, New York 10023
(212) 636-6106 (w); (914) 584-7837 (c)
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Employment

FORDHAM UNIVERSITY SCHOOL OF LAW

Professor of Law, 2001-present
James H. Quinn '49 Chair in Legal Ethics, 2006-present
Faculty Moderator, *Fordham Law Review*, 2010-2019
Teacher of the Year Award, 2015
Associate Dean for Research, 2010-13
Associate Dean for Academic Affairs, 2001-2003
Associate Professor of Law, 1995-2001
Teaching Areas: Torts, Products Liability, Defamation & Privacy, Coll. in Law and
Philosophy, Prof. Resp., Jurisprudence, Constitutional Theory, Legal Process
Committee Chairs: Student/Faculty (2017-18); Journals (2011-13); Renewal,
Tenure, Promotion Scholarship Subcommittee (2007-08);
Faculty Appointments (2006-07); Long-Range Planning (2005-06);
Curriculum (2004-05)
Member, Dean Search Committee, 2010-11

HARVARD LAW SCHOOL

Visiting Professor, Spring 2009

COLUMBIA LAW SCHOOL

Visiting Professor, Fall 2008; Spring 2020; Fall 2021

VANDERBILT LAW SCHOOL

Visiting Professor, Spring 2008
Abbreviated Seminar on *The Perils of Vioxx*

UNIVERSITY OF PITTSBURGH

Visiting Assistant Professor of Law, 1994-95
Affiliated Member, Department of Philosophy
Associate, Center for Medical Ethics

ARNOLD & PORTER, New York, New York

Litigation Associate, 1992-94
Principal Areas of Practice: Products Liability, Antitrust, Sec. Litigation

**HONORABLE KIMBA M. WOOD, UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

Law Clerk, 1991-92 Term

PAUL, WEISS, RIFKIND, WHARTON & GARRISON, New York, New York
Summer Associate, 1990

NEW YORK UNIVERSITY, DEPARTMENT OF PHILOSOPHY
Visiting Assistant Professor, 1988
Adjunct Assistant Professor, 1987, 1989

UNIVERSITY OF PITTSBURGH, DEPARTMENT OF PHILOSOPHY
Teaching Fellow, 1982-87

Education

NEW YORK UNIVERSITY SCHOOL OF LAW, J.D., 1991
Magna Cum Laude
Order of the Coif
New York University Law Review (Sr. Note Editor)
Maurice Goodman Memorial Prize (“outstanding scholarship and character”)
Paul D. Kaufman Memorial Award (outstanding law review Note (co-winner))
Judge Aileen Haas Schwartz Award (Children & the Law)
Leonard M. Henkin Prize (Equal Protection Clause scholarship)

UNIVERSITY OF PITTSBURGH, Ph.D. (Philosophy), 1987
M.A. (Philosophy), 1985
Alan Ross Anderson Fellow
University of Pittsburgh Teaching Fellow

SWARTHMORE COLLEGE, B.A., 1982
Honors in Philosophy, Mathematics, Linguistics

Honors

Hart-Dworkin Award for career contributions to Jurisprudence, Association of American Law Schools
Jurisprudence Section (co-recipient with J. Goldberg) (2024)

William L. Prosser Award for career contributions to Tort Scholarship, Association of American Law
Schools Tort and Insurance Law Section (co-recipient with J. Goldberg) (2023)

National Civil Justice Institute 2023 Scholarship Award (for *Recognizing Wrongs*)

Books

TORT LAW: RESPONSIBILITIES & REDRESS (2021) (5th ed.) (with J. Goldberg, L. Kendrick & A. Sebok)

JOHN C.P. GOLDBERG & BENJAMIN C. ZIPURSKY, RECOGNIZING WRONGS (2020) (with J. Goldberg)

RESEARCH HANDBOOK ON PRIVATE LAW THEORY (edited, with H. Dagan 2020)

THE OXFORD INTRODUCTIONS TO U.S. LAW: TORTS (2010) (with J. Goldberg)

Book Chapters

The Place of Philosophy in Private Law Scholarship, in METHODOLOGY IN PRIVATE LAW THEORY: BETWEEN NEW PRIVATE LAW AND RECHTSDOGMIK (T. Kuntz & P. Miller eds. forthcoming) (with J. Goldberg)

Trying and Succeeding, in UNDERSTANDING PRIVATE LAW: ESSAYS IN HONOR OF STEPHEN A. SMITH (E. Fox-Decent, J. Goldberg & L. Smith eds., forthcoming) (with J. Goldberg)

A Precedent-Based Critique of Legal Positivism, in PHILOSOPHICAL FOUNDATIONS OF PRECEDENT (T. Endicott, H. Kristjansson, S. Lewis, eds. 2023)

Corrective Justice and the Right to Hold on to What One Has, in PRIVATE LAW AND PRACTICE REASON (S. Steel & H. Psarras eds., 2023) (with J. Goldberg)

Hohfeldian Analysis and the Separation of Rights and Powers, in THE LEGACY OF WESLEY HOHFELD: EDITED MAJOR WORKS, SELECT PERSONAL PAPERS, AND ORIGINAL COMMENTARIES (Shyam Balganes, Ted Sichel, & Henry Smith) (2022)

Recklessness in Tort: Interstitial Law as Doctrinal Fine-Tuning, in INTERSTITIAL PRIVATE LAW (S. Bray, J. Goldberg, P. Miller & H. Smith eds., forthcoming) (with J. Goldberg)

Civil Recourse Theory, in OXFORD HANDBOOK IN NEW PRIVATE LAW THEORY (A. Gold, J. Goldberg, D. Kelly, P. Miller, E. Sherwin, H. Smith eds 2020)

From Law to Moral Philosophy in Theorizing About Negligence, in AGENCY, NEGLIGENCE, AND RESPONSIBILITY (Veronica Rodrigues-Blanco and George Pavlakos eds.)(Cambridge University Press 2021)

Introduction: The Distinction Between Private Law and Public Law 1-20 (in RESEARCH HANDBOOK ON PRIVATE LAW THEORY (eds. H. Dagan & B. Zipursky 2020))

Torts as Wrongs and Civil Recourse Theory 356-71 (in RESEARCH HANDBOOK ON PRIVATE LAW THEORY (eds. H. Dagan & B. Zipursky 2020))

Thoroughly Modern Tort Theory, 134 HARV. L. REV. F. 184-99 (2021) (with J. Goldberg)
Austerity, Compassion, and the Rule of Law, in IMAGINATION, VIRTUE AND EMOTION IN LAW AND LEGAL REASONING (A. Amaya & M. Del Mar eds. 2020)

From Riggs v. Palmer to Shelley v. Kraemer: the Continuing Significance of the Law-Equity Distinction, in PHILOSOPHICAL FOUNDATIONS OF THE LAW OF EQUITY (D. Klimchuk, I. Samet, H. Smith eds. 2020)(with J. Goldberg)

Vosburg v. Baxendale: Recourse in Tort and Contract, in CIVIL WRONGS AND JUSTICE IN PRIVATE LAW (J. Oberdiek & P. Miller eds. 2020)(with J. Goldberg)

Thomas MacIntyre Cooley (1824-98) and Oliver Wendel Holmes (1941-1935): The Arc of American Tort Theory, in SCHOLARS OF TORT LAW (J. Goudkamp & D. Nolan, eds. 2019) (with J. Goldberg)

Triangular Torts and Fiduciary Duties, in CONTRACT, STATUS AND FIDUCIARY LAW (A. Gold & P. Kelly eds., 2016) (with J. Goldberg)

Torts and the Rule of Law, in PRIVATE LAW AND THE RULE OF LAW (L. Austin & D. Klimchuk eds., 2014)

Tort Law and Responsibility, in PHILOSOPHICAL FOUNDATIONS OF TORT LAW (J. Oberdiek, ed., 2014) (with J. Goldberg)

Legal Pragmatism and Legal Pragmaticism, in PRAGMATISM, LAW AND LANGUAGE (G. Hubbs & D. Lind eds., 2013)

Anti-Empathy and Dispassionateness in Adjudication, in NOMOS LV: PASSIONS AND EMOTIONS (J. Fleming ed., 2012)

Torts, in INTERNATIONAL ENCYCLOPEDIA OF ETHICS (H. LaFollette ed., 2012)

Proximate Cause in the Law of Torts, in THE ROUTLEDGE COMPANION TO PHILOSOPHY OF LAW (A. Marmor ed., 2012)

Rights and Responsibilities in the Law of Torts, in RIGHTS IN PRIVATE LAW (D. Nolan & A. Robertson eds., 2011) (with J. Goldberg)

Rights, Responsibilities, and Reflections Upon the Sanctity of Life, in THE PHILOSOPHERS: RONALD DWORKIN (A. Ripstein ed., 2007) (with J. Fleming)

Pragmatism, Positivism, and the Conventionalistic Fallacy, in LAW AND SOCIAL JUSTICE (J. Campbell, M. O'Rourke, & D. Shier, eds., 2005)

The Philosophy of Tort Law, in BLACKWELL GUIDE TO THE PHILOSOPHY OF LAW AND LEGAL THEORY (M. Golding & W. Edmundson eds., 2004)

The Philosophy of Private Law, in THE OXFORD HANDBOOK OF JURISPRUDENCE AND PHILOSOPHY OF LAW (J. Coleman & S. Shapiro eds., 2002)

Corrective Justice in an Age of Mass Torts, in PHILOSOPHY AND THE LAW OF TORTS (G. Postema ed., 2002) (with A. Ripstein)

Pragmatic Conceptualism, in TORT LAW (E. Weinrib, ed., 2002) (reprinted)

Rights, Wrongs, and Recourse in the Law of Torts, in TORT LAW (E. Weinrib, ed., 2002) (reprinted)

The Model of Social Facts, in HART'S POSTSCRIPT (J. Coleman ed., 2001)

Articles and Essays

Presumed Damages and Reputational Injury, __ J. of Free Speech Law __ (2024) (forthcoming)

Getting the Law Right: An Essay in Honor of Aaron Twerski, 18 BROOKLYN J. CORP., FIN. & COMM. L. __ (forthcoming) (with J. Goldberg) (Festschrift for Aaron Twerski)

A Tort for the Digital Age: False Light Invasion of Privacy Reconsidered, 73 DEPAUL L. REV. ____ (forthcoming) (with J. Goldberg) (annual Clifford Symposium)

Sherman v. Department of Public Safety: Institutional Responsibility for Sexual Assault, 16 J. TORT L. ____ (2023) (with J. Goldberg) (Symposium)

[*Whose Afraid of Products Liability Law? Cybersecurity and the Defect Model*](#), (with C. Sharma) (published October 19, 2023)

Legal Wrongs Between the Prescriptive and the Positive: Replies to Commentators on Recognizing Wrongs, 27 JERUSALEM REV. LEG. STUDIES 99-125 (2023) (with J. Goldberg)

Benjamin Cardozo and American Natural Law Theory, 34 Yale J. Law and Humanities 24 (2023) (Symposium on Cardozo's *The Nature of the Judicial Process*)

Replies to Commentators, 41 Law and Philosophy 122 (2022) (with J. Goldberg)

Tort Theory, Private Attorneys General, and State Action: From Mass Torts to Texas S.B. 8, 14 J. Tort Law 469 (2021) (with J. Goldberg)

Case-Linked Jurisdiction & Busybody States, 105 Minn. L. Rev. Headnotes 54 (2020) (with H. Erichson & J. Goldberg)

Loyalty and Disclosure in Legal Ethics, 65 Amer. J. of Jur. 83 (2020)

Ziglar v. Abbasi and the Decline of the Right to Redress, 86 Ford. L. Rev. 2167 (2018)

Foreword: Access to Justice and the Legal Profession in an Era of Contracting Civil Liability, 86 Ford. L. Rev. 2107 (2018)

The Cathedral Through the Looking Glass: A Commentary on Dagan and Dorfman's Just Relationships, Columbia Law Review Sidebar (2017) (online)

Online Defamation, Legal Concepts, and the Good Samaritan, 51 Val. L. Rev. 1 (2016) (endowed lecture)

Thinking in the Box in Legal Scholarship: The Good Samaritan and Internet Libel, 66 J. Leg. Ed. 55 (2016-17)

The Strict Liability in Fault and the Fault in Strict Liability, 85 Ford. L. Rev. 743 (2016) (with J. Goldberg)

The Myths of MacPherson, 9 J. Tort Law (2016) (with J. Goldberg)

The Supreme Court's Stealth Return to the Common Law of Torts, 65 DePaul L. Rev. 433 (2016) (with J. Goldberg)

Reasonableness in and out of Negligence Law, 163 U. Pa. L. Rev. 2131 (2015)

Civil Recourse and the Plurality of Wrongs, 2014 New Zealand L. Rev. 145-69

The Fraud-on-the-Market Tort, 66 Vand. L. Rev. 1755 (2013) (with J. Goldberg) (reprinted in 56 Corporate Practice Commentator 355 (2014))

The Inner Morality of Private Law, 58 Am. J. of Juris. 27 (2013)

Civil Recourse Defended: A Reply to Posner, Calabresi, Rustad, Chamallas, and Robinette, 88 Ind. L. Rev. 569 (2013) (with J. Goldberg)

Palsgraf, Punitive Damages, and Preemption, 125 Harv. L. Rev. 1757 (2012)

Convergence and Contrast in Tort Scholarship: An Essay in Honor of Robert Rabin, 61 DePaul L. Rev. 467 (2012) (with J. Goldberg)

- Substantive Standing, Civil Recourse, and Corrective Justice*, 39 Fla. St. Univ. L. Rev. 299 (2011)
- Snyder v. Phelps, *Outrageousness, and the Open Texture of Tort Law*, 60 DePaul L. Rev. 473 (2011)
- Consent v. Closure* 96 Cornell L. Rev. 265 (2011) (with H. Erichson)
- Legal Positivism and the Good Lawyer: Rev. of Wendel's Lawyers and Fidelity to Law*, 24 Geo. J. of Leg. Eth. 1156 (2011)
- Richard Epstein and the Cold War in Torts*, 3 J. of Tort Law 5 (2010)
- The Easy Case for Products Liability: A Response to Polinsky & Shavell*, 123 Harv. L. Rev. 1919 (2010) (with J. Goldberg)
- Integrity and the Incongruities of Justice: A Review of Daniel Markovits, A Modern Legal Ethics: Adversary Advocacy in a Democratic Age*, 119 Yale L. J. 194 (2010)
- Two Takes on Truth in Normative Discourse*, 90 B.U. L.Rev. 525 (2010)
- Torts as Wrongs*, 88 Tex. L. Rev. 917 (2010) (with J. Goldberg)
- Foreseeability in Duty, Breach, and Proximate Cause*, 44 Wake Forest L. Rev. 1247 (2009)
- Intervening Wrongdoing in Tort: The Third Restatement's Unfortunate Embrace Of Negligent Enabling*, 44 Wake Forest L. Rev. 1211 (2009) (with J. Goldberg)
- Punitive Damages After Philip Morris USA v. Williams*, 44 Court Review 134 (2008-09)
- Coming Clean on Getting Even: Murphy on Hatred and Criminal Justice*, 27 Crim. Justice & Ethics 34 (2008)
- Practical Perfectionism versus Practical Positivism: The Hart/Fuller Debate at Fifty*, 83 N.Y.U. L. Rev. 1170 (2008)
- Two Dimensions of Responsibility in Crime, Tort and Moral Luck*, 9 Theoretical Inq. 97 (2007)
- Tort Law and Moral Luck*, 92 Cornell L. Rev. 1123 (2007) (with J. Goldberg)
- Minimalism, Perfectionism, and Common Law Constitutionalism: Reflections on Sunstein's and Fleming's Efforts to Find the Sweet Spot in Constitutional Theory*, 75 Fordham L. Rev. 2997 (2007)
- Sleight of Hand*, 48 Wm. & Mary L. Rev. 1999 (2007)
- Legal Obligations and the Internal Aspect of Rules*, 75 Fordham L. Rev. 1229 (2006)

Seeing Tort Law from the Internal Point of View: Holmes and Hart on Legal Duties, 75 Fordham L. Rev. 1563 (2006) (with J. Goldberg)

The Place of Reliance in Fraud, 48 Arizona L. Rev. 1001 (2006) (with J. Goldberg & A. Sebok)

Shielding Duty: How Attending to Assumption of Risk, Attractive Nuisance, and Other 'Quaint' Doctrines Can Improve Decision-Making in Negligence Cases, 79 S. Cal. L. Rev. 329 (2006) (with J. Goldberg)

Coming Down to Earth: Why Rights-Based Tort Theories Can and Must Consider Cost-Based Arguments for Damages Reform, 55 DePaul L. Rev. 469 (2006)

A Theory of Punitive Damages, 84 Tex. L. Rev. 105 (2005)

Tempering Supremacy, 73 Fordham L. Rev. 1463 (2005)

Accidents of the Great Society, 64 Md. L. Rev. 1463 (2005) (with J. Goldberg)

Rawls in Tort Theory: Themes and Counter-Themes, 72 Fordham L. Rev. 1923 (2004)

Conflicts of Integrity, 72 Fordham L. Rev. 395 (2003)

Civil Recourse, Not Corrective Justice, 91 Georgetown L. J. 695 (2003)

Unrealized Torts, 88 Virginia L. Rev. 1625 (2002) (with J. Goldberg)

Regulation and Responsibility for Lawyers in the Twenty-First Century, 70 Fordham L. Rev. 1949 (2002)

The Restatement (Third) and the Place of Duty in Negligence Law, 54 Vand. L. Rev. 657 (2001) (with J. Goldberg)

Concern for Cause: A Comment on the Twerski-Sebok Plan for Administering Negligent Marketing Claims Against Gun Manufacturers, 32 Conn. L. Rev. 1411 (2000) (with J. Goldberg)

Pragmatic Conceptualism, 6 Legal Theory 457 (2000)

The Moral of MacPherson, 146 U. Pa. L. Rev. 1733 (1998) (with J. Goldberg)

Legal Malpractice and the Structure of Negligence Law, 67 Fordham L. Rev. 649 (1998)

Rights, Wrongs, and Recourse in the Law of Torts, 51 Vand. L. Rev. 1 (1998)

Cyberlibel, AALS Newsletter in Defamation & Privacy, Spring 1998

Foreword, *Urban Bioethics*, 24 Fordham Urb. L. J. 663 (1997) (with E. Cooper)

Introduction, *Physician-Assisted Suicide: Rights and Risks to Vulnerable Communities*, 24 Fordham Urb. L. J. 777 (1997)

Legal Coherentism, 50 SMU L. Rev. 1679 (1997)

Self-Defense, Domination, and the Social Contract, 57 U. Pitt. L. Rev. 579 (1996)

The Pedigrees of Rights and Powers in Scalia's Cruzan Concurrence, 56 U. Pitt. L. Rev. 283 (1994)

Deshaney and the Jurisprudence of Compassion, 65 N.Y.U. L. Rev. 1101 (1990)

Opinion Pieces

[*The Most Disturbing Aspect of Vanessa Bryant's Case*](#), (published Sept. 15, 2022) (with Danielle Keats Citron & John C.P. Goldberg)

[*How to Reform Police Liability Without Involving McConnell or Trump*](#), Washington Post, Aug. 17, 2020 (with I. Bennett Capers & John C.P. Goldberg)

[*Unseal the Eric Garner*](#) – Daniel Pantaleo Grand Jury Documents, N.Y. Daily News, Feb. 5, 2015

Internet Publications

[*Getting Reacquainted with Constitutional Torts*](#), Jotwell on Torts (February 4, 2020) reviewing Richard Fallon, Jr., *Bidding Farewell to Constitutional Torts*, 107 **Cal. L. Rev.** 933 (2019),

[*Benjamin C. Zipursky, Cardozo's Great Proximate Cause Decision?*](#), Jotwell on Torts (March 28, 2019) (reviewing Kenneth S. Abraham & G. Edward White, *Recovering Wagner v. International Railway Company*, 34 **Tuoro L. Rev.** 21 (2018)),

[*Expressivism, Corrective Justice, and Civil Recourse*](#), Jotwell on Torts (February 20, 2018)

[*Tort Theory in Copyright Law: Thinking about Patrick Goold's Unbundling the "Tort" of Copyright Infringement*](#), Jotwell on Torts (March 15, 2017)

[*Junk Food and Assumption of Risk*](#), Jotwell on Torts (March 24, 2016)

[*Missing the Mark on Duty, Again: Regents v. Superior Court*](#), Harvard New Private Law Blog (November 5, 2015) (with J. Goldberg)

[*A School's Duty of Care to its Students: Munn v. Hotchkiss School*](#), Harvard New Private Law Blog (August 26, 2015) (with J. Goldberg)

[*Contractualism and Tort Law*](#), Jotwell on Torts (April 6, 2015)

[*Federal Preemption and Products Liability*](#), Jotwell on Torts (March 2014)

[*Moore on Intent in Battery*](#), Jotwell on Torts (April 2013)

[*Honor and Civil Recourse: A Response to Nathan Oman's The Honor of Private Law*](#) (2012). Res Gestae. Paper 9.

[*The Upcoming Supreme Court Case of Wyeth v. Levine and the Preemption Temptation \(Part One in a Two-Part Series\)*](#) (with A. Sebok) (September 23, 2008) **and** [*More on the Upcoming Supreme Court Case of Wyeth v. Levine and the Preemption Temptation: \(Part Two of a Two-Part Series\)*](#) (with A. Sebok) (Oct. 7, 2008)

[*Getting With the Program: The Vioxx Settlement Agreement*](#), (with A. Sebok) (November 20, 2007)

[*Evidence, Unfairness, and Market-Share Liability: A Comment on Geistfeld*](#), 156 U. PA. L. REV. PENNUMBRA 126 (Sept. 2007),

Selected Professional Activities

Member, Ad Hoc Expert Committee on Software, Tort Liability and Cybersecurity

Advisor, Restatement (Fourth) of Property (American Law Institute)

Advisor, Restatement (Third) of Torts (American Law Institute) Defamation and Privacy Lecturer for New York State Judicial Institute

Submission of Amici Curiae Brief, Merck Sharp & Dohme Corp. v. Albrecht, 139 S. Ct. 1668 (2019) (with J. Goldberg)

Chair, Assoc. of Am. Law Schools Section on Jurisprudence (2011-12)

Senior Editor/co-founder of *Journal of Tort Law*, peer-reviewed tort journal

Editorial Board member of *Legal Theory*

Editorial Board member of *Law and Philosophy*

Reviewer of book and article manuscripts for numerous presses and journals, including Oxford University Press, Cambridge University Press, *Law and Philosophy*

Interviewed on The NewsHour, August 22, 2005 (segment on Vioxx litigation) BBC WorldNews, August 19, 2005 (segment on Vioxx litigation)

Interviews with New York Times, Newsweek, Washington Post, National Public Radio, Associated Press, Reuters, Nature, Bloomberg Radio, on variety of issues in tort, products liability, legal ethics, and defamation law

Co-Director of Fordham Law Project in Support of Martin Luther King, Jr. High School for Law, Advocacy, and Social Justice (2001-04)

Admitted to Practice

New York State Bar, 19 92
S.D.N.Y., 1993; E.D.N.Y., 1993

Memberships

American Law Institute

Advisory Committee Member: Restatement (Third) of Torts: Intentional Torts; Restatement (Fourth) of Property; Restatement (Third) of Torts: Defamation and Privacy; Restatement (Third) of Torts: Concluding Provisions

Consultative Group Member: Restatement (Third) of Torts: Liability for Physical and Emotional Harm; Restatement (Third) of Torts: Remedies; Principles of Aggregate Litigation: Policing Project

Association of American Law Schools

Defamation and Privacy (Exec. Comm. 1999-2002)
Jurisprudence (Chair, 2011-12; Exec. Comm. 2008-12)
Tort and Insurance Law